
United States Court of Appeals

FOR THE NINTH CIRCUIT

RAMON NOVARRO,

Appellant,

vs.

PETER PITCHESS, Sheriff of the
County of Los Angeles, State of
California, et al.,

Appellees.

Appeal from the United States District Court, Southern
District of California, Central Division

PETITION FOR REHEARING

FEB 14 1967

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INTRODUCTORY STATEMENT

Your appellant, as a part of his petition herein, hereby refers to his opening and reply briefs, submitted to this Honorable Court on this appeal, and incorporates each and every part thereof as though fully set out at length.



PETITIONER HAS BEEN DENIED DUE PROCESS AND HIS RIGHT TO A HEARING UNDER THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION, AND THE DENIAL OF A HEARING BY THE DISTRICT COURT VIOLATED THOSE PRINCIPLES ENUNCIATED BY THE UNITED STATES SUPREME COURT IN *TOWNSEND v. SAIN*.

In *Townsend v. Sain*, 372 U.S. 293, 313-314, 9 L. Ed. 2d 770, at 786, the Supreme Court stated that the "Federal Court must grant an evidentiary hearing to a habeas applicant under the following circumstances: If (1) the merits of the factual dispute were not resolved in the state hearing; (2) the state factual determination is not fairly supported by the record as a whole; (3) the fact-finding procedure employed by the state court was not adequate to afford a full and fair hearing; (4) there is a substantial allegation of newly discovered evidence; (5) the material facts were not adequately developed at the state court hearing or (6) for any reason it appears that the state trier of fact did not afford the habeas applicant a full and fair fact hearing.

"(1) There cannot even be the semblance of a full and fair hearing unless the state court actually reached and decided the issues of fact tendered by the defendant . . . No relevant findings have been made unless the state court decided the constitutional claim tendered by the defendant on the merits . . . "

Note that petitioner has never been granted a hearing by the state courts on his constitutional claim nor has a state court rendered an opinion thereon, other than denial of his application.

In *Sanders v. United States*, 373 U.S. 1, 19, 10 L. Ed. 2d

148, at 163, the Court states that the better practice, if petitioner's pleading is deficient, is "to direct petitioner to amend his motion, see *Stephens v. United States*, 246 F. 2d 607 . . ."

Petitioner has never been given an opportunity to amend his petition. The suggestion by the Circuit Court, in its opinion at page 2, that appellant was afforded an opportunity to amend his petition but declined, is not in accord with the facts (see petitioner's opening brief at pages 5 and 20). Petitioner's application for a writ was summarily denied without a hearing and petitioner was then, and prior to his appeal herein, denied any opportunity to amend his petition.

Subsequent to the filing of the original briefs and oral argument in the present case, we discovered a case similar to our own (as to treatment by the court). In *Green v. Bomar*, 329 F. 2d 796, in a habeas corpus proceeding by a state prisoner, the Circuit Court of Appeals for the Sixth Circuit affirmed the denial of petitioner's writ by the District Court on the ground that "it was apparent on the face of the petition that no constitutional rights of the appellant had been violated"; nevertheless, the Supreme Court, in reliance upon *Townsend v. Sain*, *supra*, 372 U.S. 293, in a *per curiam* order, "remanded to the United States District Court . . . for a hearing . . ."



THE STATE OF CALIFORNIA, THROUGH ITS LOCAL POLICE AND PROSECUTING AGENCIES, HAS DENIED PETITIONER EQUAL PROTECTION UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

In *McLaughlin v. Florida*, 379 U.S. 184, 196, 13 L. Ed. 2d 222, at 231, the Court struck down "an exercise of the state police power which trenches upon the constitutionally protected freedom from invidious official discrimination based on race." In a more recent case, *Rinaldi v. Yeager*, 16 L. Ed. 2d 577, the Supreme Court held that it was likewise an invidious discrimination to require repayment of a trial transcript by a state prisoner, where no such repayment was required of one who had been fined, given a suspended sentence, or placed on probation. Petitioner herein is likewise the subject of an invidious discrimination, in that the State of California required him -- because he was on bail -- to answer to a complaint signed merely on information and belief; whereas prisoners who lack the resources to afford bail can be held to answer only if the arresting officer himself signs the complaint.

PETITIONER HAS BEEN DENIED DUE PROCESS UNDER THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION AS IT IS INCORPORATED IN THE FOURTEENTH.

No valid complaint was ever signed, and petitioner was found guilty in a proceeding in which no formal charge was made. In *Parr v. United States*, 363 U.S. 370, 394, 4 L. Ed. 2d 1277, at 1292, the Court said:

" . . . Under our vaunted legal system, no man, however bad his behavior, may be convicted of a crime of which he was not charged, proven and found guilty

in accordance with due process."

CONCLUSION

Wherefore, appellant prays this Honorable Court for a re-hearing and for the relief sought in his opening brief before this Honorable Court.

Respectfully submitted,

JOHN N. FROLICH

Attorney for Appellant,
Petitioner Herein.

CERTIFICATE OF COUNSEL

I, JOHN N. FROLICH, certify that I am the attorney for the appellant in this cause; that I make this certificate in compliance with Rule 23 of the Rules of this Court; that I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit and that in my opinion the foregoing brief is in full compliance with those rules; and that the within and foregoing petition for rehearing is well founded and is not interposed for delay.

JOHN N. FROLICH



PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
County of Los Angeles)

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and employed in the County of Los Angeles, over the age of eighteen years and not a party to the within action or proceeding; that

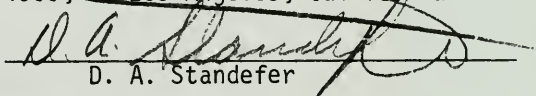
My business address is 215 West Fifth Street, Los Angeles, California 90013, that on December 12th, 1966, I served the within PETITION FOR REHEARING (No. 20649) on the following named parties by depositing a copy thereof, inclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office in the City of Los Angeles, California, addressed to said parties at the addresses as follows:

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City of Los Angeles
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Los Angeles, California

Harold W. Kennedy
County Counsel
County of Los Angeles
648 Hall of Administration
Los Angeles, California

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 12th, 1966, at Los Angeles, California.


D. A. Standefer

Orig & 20 copies: Clerk, U. S. Court of Appeals
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